

APPENDIX 11:

OIG SPECIAL REPORT:
HOW OCME HANDLED THE AUTOPSY OF SNIPER VICTIM PASCAL CHARLOT

On May 28, 2003, the Inspector General (IG) received a letter (Attachment) from Councilmember Kathy Patterson, Chairperson of the Committee on the Judiciary, dated May 21, 2003, asking that the Office of the Inspector General (OIG) include as part of an ongoing inspection of the Office of the Chief Medical Examiner (OCME) an allegation that "actions by Chief Medical Examiner (CME) Dr. Jonathan Arden served to delay for 12 to 16 hours the determination that Mr. Pascal Charlot was a victim of the Washington-area sniper when he was shot to death on October 3, 2002." Councilmember Patterson's letter characterizes the delay as "extraordinarily serious," and implies that it might have affected the investigation into the shooting because Mr. Charlot's death was "the only sniper death in which witnesses reported seeing a dark-colored sedan in the vicinity, and did not report the presence of a white panel truck."

Councilmember Patterson's letter also noted that Dr. Arden had made comments to his staff about the cause of Mr. Charlot's wounds that seemed to contradict his testimony during her Committee's budget hearing on April 10 2003. According to information received by Councilmember Patterson, Dr. Arden opined prior to the autopsy that Mr. Charlot's wounds were consistent with handgun wounds when, in fact, the autopsy revealed that the wounds were caused by a rifle. Finally, Councilmember Patterson alleges that in response to her question at a budget hearing on April 10, 2003, concerning the "timeframe for determining the shooting was a sniper death," Dr. Arden advised her that "the cause and manner of death were never in question." The inference here is that Dr. Arden may have attempted to provide inaccurate or misleading information to the Committee.

The IG instructed the OIG Inspections and Evaluation Division (I&E) to review OCME's handling of Mr. Charlot's autopsy while proceeding with an ongoing comprehensive inspection of OCME operations. Inasmuch as the subject matter of this inquiry was not part of the original scope of that inspection, this report is being submitted as an appendix to the overall review.

Issues and Conclusions

Based on the above information, we considered the following issues central to this inquiry:

- Whether actions by Dr. Arden unnecessarily delayed for 12 to 16 hours the determination that Mr. Charlot was a victim of the sniper. *Not substantiated.*
- Whether perceived differences between Dr. Arden's testimony before the Judiciary Committee on April 10, 2003, and his statements to his staff regarding the weapon used to shoot Mr. Charlot constituted an attempt to provide inaccurate or misleading information to the Committee. *Not substantiated.*

Background

On October 3, 2002, sometime after 9 p.m., Pascal E. Charlot (Charlot) was shot near Georgia Ave. and Kalmia Road, N.W. Charlot was taken to Washington Hospital Center (WHC) where he was pronounced dead at 9:56 p.m. Charlot's shooting occurred after a day of multiple

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shootings in the Washington Metropolitan Area by an individual, or individuals, using what appeared to be a high-powered rifle fired from a distance. A Metropolitan Police Department (MPD) officer contacted Jonathan Arden, M.D., CME for the District of Columbia (District), shortly after the shooting of Charlot and asked him to perform an autopsy that night. Dr. Arden declined, and the autopsy was conducted the next morning between 9:30 a.m. and noon. The autopsy results showed that Charlot's wound was consistent with one caused by a high-powered rifle.

Perspective

OCME investigates all deaths in the District that occur as the result of violence, unexpectedly, under suspicious circumstances, or while a person is in police custody; that have been referred to OCME by MPD request or by court order; and those that are related to a disease that may pose a threat to public health. D.C. Code § 5-1405(b) (LEXIS through March 14, 2003).¹ OCME is charged with determining "with reasonable medical certainty the cause and the circumstances surrounding each death required to be investigated," and must complete a report explaining the medical examination of the decedent. 22 DCMR § 2401(b); D.C. Code § 5-1409(a) (LEXIS through March 14, 2003). Finally, the Chief Medical Examiner is required to perform (or ensure that another qualified pathologist performs) an autopsy where additional investigation regarding the cause or manner of death is warranted. D.C. Code § 5-1409(b) (LEXIS through March 14, 2003).

Scope and Methodology

I&E's inquiry into this matter included the following research and activities:

- collection and analysis of all data maintained in OCME's case file on Charlot;
- examination of the MPD Death Report on Charlot;
- examination of District Fire & Emergency Medical Services records related to the case;
- interviews of all key OCME employees involved in the case, and discussions with two MPD officers involved in the Charlot investigation; and
- review of a videotape of Dr. Arden's testimony at the April 10, 2003, budget hearing before the Committee on the Judiciary.

ISSUE ONE

The allegation that actions by Dr. Arden unnecessarily delayed for 12 to 16 hours the determination that Charlot was a victim of the sniper was not substantiated.

Sequence of Events Leading to the Charlot Autopsy

On October 3, 2002, at approximately 9:15 p.m., members of the MPD Fourth District received a radio call concerning the sound of gunshots in the area of Georgia Avenue and Kalmia

¹ The OCME is statutorily required to investigate other types of deaths as well as those listed above.

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Road, N.W. Upon arriving at the scene, police officers located a subject later identified as Charlot suffering from a gunshot wound to the right hand and the upper left chest area. Charlot was transported to WHC, where efforts to revive him failed. He was pronounced dead at 9:56 p.m.

At approximately 10:22 p.m., [REDACTED] of MPD notified OCME intake assistant [REDACTED] of the homicide. [REDACTED] notified the medical examiner on call, [REDACTED] M.D., at 10:25 p.m., and was instructed to accept jurisdiction of the body. [REDACTED] then notified the technician on duty in the OCME mortuary, [REDACTED] at 10:26 p.m. and informed him that a body was to be picked up at WHC. After Technician [REDACTED] reported for duty at 12:00 a.m. on October 4, 2002, he left OCME at 12:16 a.m. to pick up the body of Charlot at WHC.

MPD Sgt. [REDACTED] of the Violent Crimes Unit contacted the OCME from the WHC between 10:30 and 11:00 p.m. to request that a medical examiner come to OCME to perform an autopsy when the body arrived. At 11:15 p.m. Dr. Arden contacted [REDACTED] and declined the request because the staff necessary for conducting autopsies was not available after hours.² He further stated that any attempt to perform an autopsy in the middle of the night without the necessary support staff of technicians and a photographer would compromise the quality and integrity of the autopsy. OIG inspectors confirmed that OCME does not have autopsy personnel on call, and OCME medical examiners who were questioned about this case stated that they have never known an autopsy to be performed after normal duty hours.

Following his discussion with the MPD officer, Dr. Arden contacted OCME and left a message asking to be called when Charlot's body arrived at OCME. [REDACTED] returned from WHC with the body at approximately 2:30 a.m. and completed processing procedures. After the body arrived and was processed, a technician called Dr. Arden, who asked him about Charlot's wound. The technician opined that "It looks like a rifle shot." Dr. Arden asked the technician to measure the wound, and was given the measurements in centimeters. Dr. Arden stated that he does not recall what he told the technician after being told the wound's measurements. The technician also does not recall what, if anything, Dr. Arden said.

Dr. Arden advised OIG inspectors that on October 4, 2002, he arrived at OCME around 7:30 a.m. and examined Charlot's body. He also reviewed the x-rays taken earlier by the mortuary technician. Subsequently, at an 8:30 a.m. staff meeting with the medical examiners, Dr. Arden told them that MPD had asked him to come in the night before to do an autopsy, but he had declined. He told the medical examiners that he examined Charlot's wound, and it did not look like what had been described to him the night before by the mortuary technician. He said he was not convinced that it was a rifle wound, and that it possibly could be the result of another shooting with a handgun. Dr. Arden stated that he acted with caution and gave his staff the impression that he had significant doubt. He stated that he made Charlot's autopsy a priority, and a medical examiner began work that morning at 9:30 a.m.

² Dr. Arden told OIG inspectors that he did not recall what time he spoke with the MPD officer.

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With a MPD officer in attendance, Dr. [REDACTED] performed the autopsy on Charlot's body and concluded that his wounds were consistent with those caused by a rifle. However, Dr. [REDACTED] solicited the opinion of a second medical examiner, [REDACTED] who agreed with Dr. [REDACTED] findings. Then, a third medical examiner, [REDACTED] examined the wounds and concurred with their findings.

Charlot's autopsy was completed at approximately 12 noon on October 4. Dr. Arden had left the office, and Dr. [REDACTED] contacted him on his cellular phone to request that he return to OCME and review the autopsy findings and the evidence recovered.³

Dr. Arden stated to OIG inspectors that he did not immediately return to the OCME due to a personal matter, but arrived at the OCME between 1:30 and 2:00 p.m. He immediately reviewed the autopsy results and agreed with [REDACTED] that Charlot's wound was consistent with the type of wound caused by a high-powered rifle. The bullet fragments extracted from the body were turned over to a MPD officer at 2:50 p.m.

Officer [REDACTED] of the MPD Mobile Crime Unit processed the Charlot crime scene and was involved in the initial investigation. Officer [REDACTED] told OIG inspectors that he was aware that Dr. Arden had been contacted and asked to perform an autopsy. Our inspectors asked him about the significance of an autopsy being performed the following morning (October 4) rather than closer to the time of the shooting. Officer [REDACTED] opined that the extraction and identification of bullet fragments and other information resulting from the autopsy might have enabled officers on the scene to establish the trajectory of the bullet and narrow the field of search for shell casings.

Analysis and Conclusions

Was the delay reasonable?

It is important first to determine the actual length of any delay in performing the autopsy in order to assess reasonableness. Based on the chronology of events set forth above, Charlot's body did not arrive at the OCME until 2:30 a.m. The body was then weighed, tagged, photographed by Polaroid, and x-rays were taken of Charlot's head, chest, and right hand. After these procedures were completed, Dr. Arden had a discussion with the technician on duty concerning the wounds. Dr. Arden arrived at the OCME about 7:30 a.m. on October 4 and examined the body. The staff met concerning the autopsy at 8:30 a.m. Charlot's autopsy took top priority and was Dr. [REDACTED] first autopsy of the day. It began at approximately 9:30 a.m. and concluded at noon. An MPD officer was in the OCME facility during the autopsy and was made aware of the unofficial results immediately.

The chronology above indicates that Charlot's body was not available for autopsy at the OCME until 2:30 a.m., October 4. Dr. Arden first examined the body at 7:30 a.m., and the autopsy began at approximately 9:30 a.m. with MPD in attendance. Furthermore, OCME was not prepared to conduct an autopsy on Charlot's body on the night of October 3 because all

³ When questioned by OIG inspectors, Dr. [REDACTED] recalled that she may have made a second phone call to Dr. Arden, but was not certain. Dr. Arden did not remember receiving a second call.

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required personnel and resources were not available. Based on our review of District law,⁴ it appears that there is no mandatory time frame in which the CME must conduct an autopsy. In this instance, Dr. Arden stated that he was unable to mobilize sufficient staff to conduct an autopsy after hours, and that conducting an autopsy with less than normal staffing would have jeopardized the integrity of the results. Indeed, this view is buttressed by the following: (1) Dr. Arden himself was uncertain as to the nature of the gunshot wound when viewing the body prior to the autopsy; and (2) only after three medical examiners examined the wounds during the autopsy was a determination made and recommended to Dr. Arden.

Based on the above information, we cannot conclude that Dr. Arden's decision concerning the timing of the autopsy was unreasonable or that he created an unnecessary delay in starting the autopsy.

Did the delay in conducting the autopsy disadvantage the investigation?

It is not within the scope of this inquiry to ascertain, in hindsight, whether an autopsy conducted immediately during the evening of October 3, 2002, would have affected the investigation by a Montgomery County, Maryland, task force of serial murders by snipers in the Washington, D.C. area. While one could speculate that the earliest possible autopsy may have maximized the opportunity to obtain information relevant to the investigation, we cannot say with any certainty whether a delay of a few hours would have made a difference in this case. In any event, without professional staff on hand, Dr. Arden believed that it was not feasible to conduct an autopsy until the next morning and, therefore, no earlier option was available to him.

Should the OCME have provided more assistance, short of an autopsy, on the evening of the Charlot homicide?

We accept Dr. Arden's view that only the results of an autopsy would provide the information required to link conclusively the Charlot homicide to the sniper shootings. However, based on information from a police officer at the crime scene, insights from a medical examiner might have assisted investigators in matters such as determining the direction of gunfire and defining the area to be searched. Indeed, District regulations state that MPD may request the presence of the CME at the scene of death to assist the investigation. See 22 DCMR § 2404.3. It is our understanding that medical examiners in other jurisdictions make themselves available off-hours to consult with investigators prior to the time that an autopsy is performed. Given that sniper shootings had occurred in the Washington, D.C. area earlier in the day, we believe that Dr. Arden could have accommodated the MPD to some extent by sending one of his medical examiners to conduct an external examination of Charlot's body in order to give a preliminary assessment to those investigating the matter.

⁴ See D.C. Code §§ 5-1401 – 1417 (LEXIS through March 14, 2003) and 22 DCMR §§ 2400 – 2411.

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What is the practice of medical examiners in other jurisdictions during exigent circumstances?

We benchmarked practices in other similarly situated areas, and officials in medical examiners' offices in Pennsylvania, Maryland, and Virginia advised us that they are not staffed to conduct after-hours autopsies. In Philadelphia, for example, autopsies are performed only from 8:30 a.m. to 2:00 p.m., and after-hour autopsies have never been conducted. However, given the current concerns generated by the threat of terrorist attacks in the nation's capital, and high local murder rates, consideration should be given to developing policies and procedures that make critical OCME services – including autopsies – available to investigators and District officials on a 24 hour-per-day basis.

ISSUE TWO

We are unable to draw any conclusions about perceived differences between Dr. Arden's testimony before the Judiciary Committee on April 10, 2003, and his statements to his staff regarding the weapon used to shoot Charlot.

Dr. Arden's Testimony Concerning Cause of Death

Councilmember Patterson's letter cites Dr. Arden as testifying under oath before the Committee on the Judiciary that the cause and manner of Charlot's death were never in question, and that Charlot was quickly identified as a sniper victim. There is an inference in the letter that these statements by Dr. Arden at the hearing conflict with information later obtained by Councilmember Patterson: (1) that Dr. Arden stated before the autopsy that Charlot's death was caused by a handgun rather than a rifle; and (2) that Dr. Arden declined to come to the morgue on the night of the shooting, thereby delaying the identification of Charlot as a sniper victim.

To determine whether Dr. Arden's statements as set forth above were untrue or misleading, OIG inspectors and investigators reviewed the videotape of Dr. Arden's testimony before Councilmember Patterson on April 10, 2003. In addition, I&E interviewed Dr. Arden and his medical examiners on this subject. The videotape shows the following exchange, reproduced here, between Councilmember Patterson and Dr. Arden regarding the cause and manner of Charlot's death:

Ms. Patterson: *I had also, more recently, asked about the sniper victim, Mr. Charlot. Can you, just for our general education purposes, share with the Committee what the role of the Medical Examiner was in that case, and walk or talk us through what you did, when and so forth?*

Dr. Arden: *Our involvement and contribution, although in that case was more high profile, really is representative of what we do routinely, especially in homicidal death investigations. We were responsible for, of course, the most basic conclusion of cause and manner of death, which frankly, was never really in question. In the man [sic], the sniper victim, the cause of death was a gunshot wound, and the manner of death was homicide.*

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We were involved in the early phase, in coordination with the Metropolitan Police Department, in ascertaining whether the evidence supported that he was, indeed, a victim of the sniper shootings, which were very early in the time course, at that moment [sic]. We identified, or if I should say, actually recovered the projectiles, or in his case, the fragments that resulted from them. So we were in a position to assess the nature of the wound and whether it was or was not consistent with the type of weapon that was suspected to have been used by the sniper, similarly recovering the remains of the remnants of the ammunition that were still within his body, and passing those on to the police, who performed the actual firearms and ballistics identification and laboratory studies.

So we were there to ascertain how and why he died, and give the medical information as to whether this indicated a similar type of weapon, and then pass the evidence on for further analysis.

Ms. Patterson: *On the individual, Mr. Charlot, who was a sniper victim, the time frame was that there were several shootings in Montgomery County in the morning, and he was a victim in the evening. At what point was the Office of the Chief Medical Examiner able to say this looks like a high-powered rifle wound? At what point were you able to do that, such that the police knew that they needed to begin coordinating with Montgomery County.*

Dr. Arden: *The initial suspicions occurred the following morning when we examined his body and began the autopsy and the external documentation of the findings. We perform our own x-ray evaluations. The police were actually present for the autopsy and were coordinating with us during the course of that morning. So it was the very next morning when we examined him that those issues were raised and followed.*

With respect to the veracity of Dr. Arden's statement that "the cause and manner of Mr. Charlot's death were never in question," he clarified the statement in his own testimony when he said that the "cause of death was a gunshot wound, and the manner of death was homicide." He was not asked at that time for additional detail concerning the gunshot wound, i.e., whether it was from a handgun or a rifle, nor did he volunteer information concerning initial differing opinions concerning the nature of the gunshot wound prior to the autopsy.

Councilmember Patterson queried Dr. Arden about the timeframe for determining that Charlot was a sniper victim: "At what point were you able to do that, such that the police knew that they needed to begin coordinating with Montgomery County." Dr. Arden's response was that, "The initial suspicions occurred the following morning when we examined his body and began the autopsy and the external documentation of the findings." On this point, it is important to determine whose "initial suspicions" Dr. Arden is referring to – his or those of members of his

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staff. Although Dr. Arden did not volunteer details concerning conversations that he had with his staff concerning the type of the gunshot wound suffered by Charlot, it seems clear that he was speaking for himself when he testified that he suspected a connection with the sniper shootings on the following morning.

As noted in the Background section above, a medical technician who viewed Charlot's body advised Dr. Arden in a telephone conversation on the evening of the shooting (October 3) that the wounds appeared to have been caused by a rifle. In addition, OIG inspectors were given conflicting versions of Dr. Arden's statements or comments regarding Charlot in the 8:30 a.m. staff meeting on October 4. According to Dr. Arden, his preliminary statement at the meeting was that he was not convinced that Mr. Charlot's wound was representative of that of a high-powered rifle, as seen in the sniper cases. However, three medical examiners interviewed had a somewhat different recollection of Dr. Arden's statements to the meeting. They stated that Dr. Arden said *conclusively* that the wound was not consistent with those made by a high-powered rifle, but was consistent with those made by a 9mm or 357 magnum handgun with "intermediary target," meaning that the bullet had passed through an object prior to hitting Charlot.

Dr. Arden stated to the OIG inspectors that the opinions he expressed that morning were clearly preliminary as an autopsy had not yet been performed. He said that he did not want anyone arriving at conclusions prematurely and, even while expressing his doubts, he did not categorically exclude the possibility that this shooting might have been connected to the sniper case. His position was that any opinions expressed prior to the conclusion of an autopsy are purely speculative, whereas a completed autopsy removes all doubt.

Conclusion

Based on the preponderance of information available, the OIG cannot conclude that Dr. Arden provided false information or intended to mislead Councilmember Patterson while providing testimony. His statements were general and lacked the specific details concerning earlier discussions with his own staff, which he was not requested to explain. Irrespective of the differences in the perspective and recollection of Dr. Arden and his staff, a definitive conclusion on the cause and manner of death, in the opinion of Dr. Arden, could not be reached until after an autopsy was conducted. Statements made to his professional staff prior to the autopsy were clearly preliminary and, in fact, underscored the need to await the results of the autopsy which, when conducted, established the cause and manner of death.

While we cannot conclude that Dr. Arden lacked candor in his testimony, it is understandable that the apparently conflicting information later received by Councilmember Patterson would cause her to seek further clarification. In hindsight, we believe that it would have been more prudent for Dr. Arden to delineate the steps that were taken by him and his staff in this case in a more comprehensive manner in order to avoid the misunderstanding and confusion that ensued.

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OIG Action

As a result of the issues and concerns raised by this incident, our Report of Inspection on the OCME addresses the need for the Chief Medical Examiner to consider providing after-hours autopsy capability to assist MPD or other investigative agencies during time-sensitive, unusual investigative situations, or special circumstances that could affect public health and safety.